

**PUBLIC ACTS, 1999**

**CHAPTER NO. 477**

**HOUSE BILL NO. 672**

**By Representatives Arriola, Hargrove and Mr. Speaker Naifeh and Representatives Lois DeBerry, Rinks, Williams, McDonald, Kisber, Armstrong, Larry Turner, Brooks, Stulce, Sands, Davidson, Pinion, Lewis, Sherry Jones, Bone, Ridgeway, Robinson, Ferguson, Tindell, Eckles, West, Hood, Caldwell, Fraley, Brenda Turner, Maddox, Odom, Pruitt, Winningham, Miller, Langster, David Davis, Black, Hargett, Newton, Montgomery, Hassell, Brown, White, Fitzhugh, Towns, Cooper**

**Substituted for: Senate Bill No. 893**

By Senators Rochelle, Cooper, Haynes, Atchley, Blackburn, Burchett, Burks, Carter, Clabough, Cohen, Crowe, Crutchfield, Davis, Dixon, Elsea, Ford, Fowler, Graves, Harper, Haun, Henry, Herron, Kurita, Kyle, Leatherwood, McNally, Miller, Person, Ramsey, Springer, Williams, Womack Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 4; Title 56; Title 68 and Title 71, relative to long-term care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (a) The Commissioner of Health shall report to the House Health and Human Resources Committee and the Senate General Welfare, Health and Human Resources Committee of the General Assembly on or before January 15 of each year on the implementation of the long-term care services plan developed pursuant to Tennessee Code Annotated, Title 71, Chapter 5, Part 14.

(b)(1) At least thirty (30) days before the State submits any waiver, waiver amendment, or state plan amendment to the United States Department of Health and Human Services concerning services to older and/or disabled persons that is within the scope of the long-term care services plan developed pursuant to Tennessee Code Annotated, Title 71, Chapter 5, Part 14, the Commissioner of Health shall file a full report on such proposed waiver or amendment with the Finance Committees of the House of Representatives and the Senate of the General Assembly.

(2) No such waiver or amendment shall be implemented unless it is specifically funded in the General Appropriations Act.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, is amended by adding the following as a new section to be appropriately designated:

Section \_\_\_\_\_. (a) To address the need of the State of Tennessee to develop for the future the framework and infrastructure for a comprehensive long-term care system that makes an appropriate place for both institutional care and a broad array of home- and community-based services, this section establishes a program which is intended to provide information, referral and assistance on a wide variety of quality, cost-effective and affordable long-term care choices and which should be designed to provide data

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collection and individual assessment and referral to community-based services and appropriate placement in long-term care facilities.

(b) As used in this section:

(1) "Area agency on aging" means the agency defined in Tennessee Code Annotated, Section 71-2-103.

(2) "Assessment services" means pre-screening and evaluation of an individual's health and functional status to estimate the need for long-term care services and to identify appropriate service options that meet these needs.

(3) "Director" means the Executive Director of the Commission on Aging.

(4) "Hospital" shall have the meaning ascribed to such term under Tennessee Code Annotated, Section 68-11-201.

(5) "Nursing Home" shall have the meaning ascribed to such term under Tennessee Code Annotated Section, 68-11-201.

(c)(1) There is hereby established a long-term care client information, referral and assistance program which shall be administered by the Director of Aging and shall be implemented by area agencies on aging in accordance with the provisions of this section.

(2) Individuals in the community seeking long-term care services for the elderly and disabled may obtain information about the available services and receive assistance in accessing needed services from the appropriate area agency on aging. Individuals who are initially pre-screened by the area agency on aging will be referred to the local health department if determination of eligibility for Medicaid-funded programs is needed. Area agency on aging staff may assist the individual to ensure that appropriate documentation is collected and available when the individual is referred to the local health or human services department for medical and financial eligibility determination.

(3) With the consent of the consumer or the consumer's representative, a copy of the data gathered by the information, referral and assistance provider during the screening process will be provided to the health department to facilitate the pre-admission evaluation assessment process and to the Department of Human Services for use in beginning the financial eligibility determination process. Staff from the health department and the Department of Human Services will contact the applicant to collect information for assessment.

(4) For those individuals already residing in nursing facilities or awaiting nursing facility placement following hospital discharge or directly seeking nursing home services, the pre-admission evaluation (PAE) application will continue to be completed by nursing facility, hospital staff or the individual's physician and submitted to the division of long-term care of the bureau of TennCare for medical criteria determination.

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(5) For those determined to be medically or financially ineligible for Medicaid/TennCare funded services, the area agency on aging information, referral and assistance agency will:

(A) conduct a more in-depth assessment of the person's needs;

(B) identify appropriate community services to meet those needs, including eligibility requirements:

(C) identify providers, including government agencies, private non-profit agencies, and for-profit agencies based upon rules and regulations adopted by the commission on aging;

(D) provide information on "How to Select a Provider," and

(E) offer tracking and follow-up to assure the client has received services.

(6) Any entity that provides client screening and assessment services pursuant to this section shall not also directly provide long-term care services.

(d) Prior to January 1, 2000, the Commissioner of Health in consultation with the Director and the Commissioner of Human Services, shall adopt by rule, promulgated in accordance with the provisions of Title 4, Chapter 5, a long-term care client assessment and referral data entry form. The purpose of this form is for data collection and referral services only, not to determine eligibility for services. Such form shall be concise and questions shall be limited to those necessary to carry out the stated purposes. The long-term care client assessment and referral data entry form shall be used by all information, referral and assistance providers.

(e) The director and the area agencies on aging shall cooperate in compiling results of all assessment services conducted under this section. Area agencies on aging may provide assessment services under this section to assist persons seeking or needing long-term care. In providing such services, the staff of the area agencies on aging shall provide assessment and referral services.

(f) The director, after consultation with the Commissioner of Health, shall assure that each area agency on aging shall compile comprehensive resource information for use by individuals and agencies related to long-term care resources, including offices of the Department of Health, the Department of Human Services and county health departments. This information shall include, but not be limited to, resources available to assist persons in selecting among all available long-term care options, including both institutional and non-institutional care, and such information shall be accurate and balanced.

(g) Area agencies on aging shall provide to all individuals, or caregivers of individuals in need of long-term care services, comprehensive information on the range of long-term care services which are appropriate for that individual and which are available in that individual's community.

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(h) On and after July 1, 2000, the area agencies on aging will operate or contract for a home care ombudsman program supervised by the Commission on Aging, office of the state long-term care ombudsman. The home care ombudsman will investigate consumer/family member complaints regarding the quality of care, and assist in the resolution of problems between the consumer/family and a case manager or service provider.

(i) The director shall adopt rules to govern such matters, as the director deems necessary for the administration of this act. Such rules shall be promulgated in accordance with the provisions of Title 4, Chapter 5.

SECTION 3. Tennessee Code Annotated, Title 71, Chapter 5, Part 14, is amended by adding the following as a new section:

Section \_\_\_\_\_. (a)(1) By January 1, 2000, the long-term care services planning council, in consultation with the long-term care advisory council, shall develop an operational plan and budget projections for a program for home- and community-based services to elderly and disabled individuals in need of assistance. The program should provide services to elderly and disabled individuals in need of assistance who do not qualify for long-term care services under medical assistance pursuant to Part 1 of this Chapter. The council shall report on the program to the General Assembly.

(2) Nothing in the plan developed pursuant to this section shall be construed to create an entitlement for individuals.

(3) The plan should identify eligible services, the extent and manner in which such services are allocated and made available to elderly and disabled individuals in need of assistance who do not qualify for long-term care services under medical assistance pursuant to Part 1 of this Chapter, and the manner in which such services are coordinated with each other and long-term care services available outside the program, including, but not limited to, medical assistance and Medicare.

(4) The plan shall develop and include mechanisms to include the choice of an individual and the individual's representative regarding which covered services to receive, how services are provided and who provides services.

(5) The plan should propose a mechanism to impose cost-sharing to be set by rule with respect to covered services.

(6) The plan shall provide for quality assurance and safeguards for the eligible individuals.

(7) The plan shall designate a state agency to administer the program or to supervise administration of the program.

(b)(1) Home- and community-based services, as defined in Section 71-5-103, shall be available to eligible elderly and disabled individuals in need of assistance under the program established by this section. The program shall set limits to services based on available fiscal resources. The services shall be specified in a manner that permits flexibility for providers to meet the needs of eligible individuals in a cost-effective manner

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with services to be delivered in an individual's home, a range of community residential arrangements, or outside the home.

(2) Home- and community-based services would be provided under the plan required in this section to program participants if:

(A) an assessment pursuant to Section 2 of this act has been made; and

(B) an individualized plan of care is developed with involvement from the individual or the individual's representative.

(3) The State shall make reasonable efforts to identify and arrange services described in the plan, but nothing in this section shall be construed as requiring the state to provide all the services such plan may specify.

(c) The Commissioner of Health is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. Tennessee Code Annotated, 71-5-1402(a), is amended in the first sentence by inserting the language ", one (1) member of the Senate appointed by the Speaker of the Senate, one (1) member of the House of Representatives appointed by the Speaker of the House" between the language "human services" and the language "and the executive director".

SECTION 5. (a) Tennessee Code Annotated, Section 71-5-1402(b), is amended by deleting the language "sixteen (16)" and by substituting instead the language "eighteen (18)".

(b) Tennessee Code Annotated, Section 71-5-1402(b), is further amended by deleting the word "and" at the end of subdivision (15) and by deleting the punctuation "." at the end of subdivision (16) and by adding at the end of subdivision (16) the following new language:

;

(17) One (1) member of the Senate appointed by the Speaker of the Senate;  
and

(18) One (1) member of the House of Representatives appointed by the Speaker of the House.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. Nothing in this act shall prohibit the commission on aging or any area agency on aging from continuing to conduct information referral and assistance activities which are otherwise authorized by law.

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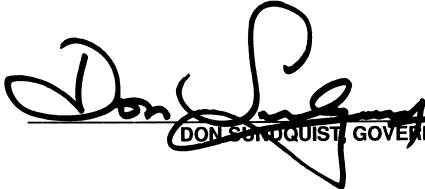
SECTION 8. This act shall take effect upon becoming a law, except for subsections (c)(3), (c)(5), (d), (e), and (g) of Section 2 which shall take effect on July 1 of any fiscal year in which funding is provided for its implementation, the public welfare requiring it.

**PASSED: May 27, 1999**

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

**APPROVED this 17th day of June 1999**

  
DON SUNDQUIST, GOVERNOR